

# SUPREME COURT OF ARKANSAS

No. 06-672

LINDA MCMICKLE, ADMINISTRATRIX OF THE ESTATE OF CALVIN MCMICKLE, DECEASED,  
APPELLANT/CROSS-APPELLEE,

VS.

DAVID GRIFFIN AND DAVID E. TAYLOR,  
APPELLEES/CROSS-APPELLANTS,

Opinion Delivered 5-17-07

PETITION FOR REHEARING  
DENIED; SUPPLEMENTAL OPINION  
ISSUED.

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**ROBERT L. BROWN, Associate Justice**

## *Supplemental Opinion*

Petitioners David Griffin and David E. Taylor, as well as The Agriculture Council of Arkansas, as *amicus curiae*, raise the issue of whether Ark. Code Ann. § 27-35-210(a) (Repl. 2004) repealed Ark. Code Ann. § 27-35-102 (Repl. 2004) by implication or whether the two statutes can be read harmoniously. We reiterate our original holding that a repeal by implication has occurred, and we deny rehearing.

Both the petitioners' and the *amicus's* briefs advance the argument that § 27-35-210(a)(2)(A) deals only with special permits for hauled cargoes. They maintain that the tractor at the time of the accident was not being hauled on a vehicle and, thus, this section does not apply. We disagree because that interpretation of the statute is too narrow.

As quoted in our original opinion, Ark. Code Ann. § 27-35-206(a) (Repl. 2004) provides that no vehicle shall be operated on state highways with a width in excess of 102 inches without a special permit as provided in § 27-35-210. This prohibition deals with width and is not limited to hauling cargo. Section 27-35-210(a)(2)(A) then sets out exceptions to that permit requirement, including movement on the highways during daylight hours. Section 27-35-210(a)(2)(A) also is not limited to situations where cargo is being hauled.

In the instant case, the issue to be decided was whether the tractor with the attached plow, which exceeded 102 inches in width, was moved on the highway during daylight hours. If so, the tractor/plow did not need a special permit. That is the question for the jury to decide on retrial.

On a related matter, we disagree with the petitioners and *amicus curiae* that § 27-35-210(a)(2)(A) was not enacted later than § 27-35-102. Though a permit section was included in Act 300 of 1937, the language codified at § 27-35-210(a)(2)(A) was not enacted until Act 32 of 1971. Accordingly, an irrevocable conflict between the two statutes exists.

Petitioners raise as their third point for rehearing that with respect to the lighting requirement, the opinion erroneously stated that the jury had not been instructed on Ark. Code Ann. § 27-36-219 (Repl. 2004), when it had been instructed on § 27-36-219(d)(1). Section 27-36-219(d)(1) deals with the requirement of one red light on the rear of a tractor one-half hour after sunset. The issue at trial and on appeal, however, was whether lighting was required on the attached plow which allegedly blocked the tractor's lighting. We read

§ 27-36-219(e) and (f) as requiring that a farm tractor or unit of farm equipment, whether self-propelled or towed, have lamps or reflectors visible from the rear. Lamps or reflectors solely on the rear of a tractor may be blocked by an attached plow and, thus, may not be sufficiently visible to comply with this statute. This, again, is a question for the jury to decide.

Petition for rehearing denied.